

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DONTIE S. MITCHELL,
Petitioner,

v.

Civil No. 9:03-CV-019
(GLS/VEB)

SUPERINTENDENT, Southport
Correctional Facility,
Respondent.

APPEARANCES:

OF COUNSEL:

FOR THE PETITIONER:

DONTIE S. MITCHELL
Petitioner, *Pro Se*
98-A-0071
Upstate Correctional Facility
P.O. Box 2001
Malone, New York 12953

FOR THE RESPONDENT:

HON. ANDREW CUOMO
Office of the Attorney General
Albany Office
The Capitol
Albany, New York 12224

BRIDGET ERIN HOLOHAN
Assistant Attorney General

Gary L. Sharpe
U.S. District Judge

MEMORANDUM-DECISION AND ORDER

I. Introduction

After Dontie S. Mitchell filed a *habeas corpus* petition challenging his New York State conviction and sentence for First Degree Robbery, First Degree Attempted Robbery, Second Degree Criminal Possession of a Weapon, Fourth Degree Grand Larceny, First Degree Criminal Use of a Firearm, and Fifth Degree Possession of Stolen Property, see *Dkt. No. 1*; see also 28 U.S.C. § 2254, his petition was referred to Magistrate Judge Victor E. Bianchini for report and recommendation. See 28 U.S.C. § 636(b)(1)(A) & (B); Rules 8 & 10 of the Rules Governing § 2254 Petitions in the United States District Courts, *foli.* 28 U.S.C. § 2254; N.D.N.Y. R. 72.3(c). Subsequently, Judge Bianchini issued a report recommending that the petition be denied. See *Report-Recommendation (“R&R”)*, *Dkt. No. 50*.¹

Broadly construing Mitchell’s petition, Judge Bianchini concluded that it raised the following issues: (1) whether Mitchell’s due process rights were violated when the Appellate Division denied the suppression of his confession and affirmed his conviction, and (2) whether certain incriminating statements were improperly admitted at trial in violation of

¹The Clerk is directed to append the Report-Recommendation to this decision, and familiarity is presumed. See *Dkt. No. 50*.

Mitchell's Fifth Amendment rights. Judge Bianchini gave thorough consideration to Mitchell's arguments and the underlying record.

Based on the record, Judge Bianchini concluded the following: (1) that Mitchell was afforded a full and fair opportunity to litigate his suppression claims in the State court and (2) that his mere disagreement with the State court's outcome did not qualify as an "unconscionable breakdown" in the underlying process. Moreover, Judge Bianchini found that Mitchell failed to overcome the presumption that the State court's factual findings were incorrect with the requisite clear and convincing evidence. Finally, Judge Bianchini concluded that Mitchell failed to demonstrate by clear and convincing evidence that the trial court's factual findings regarding the voluntariness of his statements were based on an unreasonable determination of the evidence presented. See *Dkt. No. 50*.

Mitchell has now filed objections to Judge Bianchini's report. See *Dkt. Nos. 54*. Although untimely, the court has given full consideration to his objections. As such, this court's judgment entered on July 6, 2007 is hereby vacated.

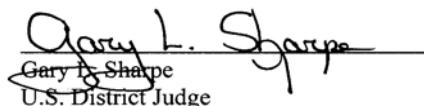
Because his objections specifically attack Judge Bianchini's legal and factual findings, they will be reviewed under a *de novo* standard. See

Almonte v. N.Y. State Div. of Parole, 9:04-CV-484, 2006 WL 149049 (N.D.N.Y. Jan. 18, 2006). However, the arguments he raises in his objections were specifically addressed by Judge Bianchini in his Report-Recommendation. Accordingly, following a *de novo* review, this court accepts and adopts the recommendation of Magistrate Judge Bianchini for the reasons stated in the May 15, 2007 Report-Recommendation.

WHEREFORE, and for the reasons stated, it is hereby
ORDERED that the judgment entered on July 6, 2007 (*Dkt. No. 53*) is
VACATED; and it is further
ORDERED that Mitchell's application for *habeas corpus* relief is
DENIED and his petition is **DISMISSED**; and it is further
ORDERED that Magistrate Judge Bianchini's May 15, 2007 Report-Recommendation is **ADOPTED IN ITS ENTIRETY**; and it is further
ORDERED that the clerk serve a copy of this Decision and Order upon the parties.

IT IS SO ORDERED.

August 21, 2007
Albany, New York


Gary L. Sharpe
U.S. District Judge